Supreme Court, U.S.
FILED

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NO. _____

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

JULIUS J. LARRY III
Petitioner,
v.
CHIEF JUSTICE THOMAS R. PHILLIPS; JUSTICES RAUL A. GONZALEZ; NATHAN I. HECHT; JOHN CORNYN; CRAIG ENOCH; ROSE SPECTOR; PRISCILLA R. OWEN; JAMES A. BAKER; GREG ABBOTT, IN THEIR OFFICIAL CAPACITIES; SUPREME COURT OF TEXAS; RACHEL MARTIN - EXECUTIVE DIRECTOR OF TEXAS BOARD OF LAW EXAMINERS, IN HER OFFICIAL CAPACITY; BOARD OF LAW EXAMINERS OF TEXAS; COLLEEN McHUGH - PRESIDENT OF STATE BAR OF TEXAS, IN HER OFFICIAL CAPACITY; STATE BAR OF TEXAS AND THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE OF THE SUPREME COURT OF TEXAS, *Respondents.*

Petition For A Writ of Certiorari
To The Supreme Court of Texas

PETITION FOR WRIT OF CERTIORARI

OF COUNSEL:
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P.L.L.C.

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93 pp

QUESTION PRESENTED FOR REVIEW

Whether Petitioner, an African American civil rights lawyer, was entitled to notice and a hearing prior to the Texas Board of Law Examiners of the Supreme Court of Texas "voiding" his bar examination scores and revoking his law license, under the Due Process Clause, Fourteenth Amendment, U.S. Constitution?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are:

Julius J. Larry III - Petitioner.

Chief Justice Thomas R. Phillips; Justices Raul A. Gonzalez; Nathan I. Hecht; John Cornyn; Craig Enoch; Rose Spector; Priscilla R. Owen; James A. Baker; Greg Abbott, in their Official Capacities; Rachel Martin - Executive Director of Texas Board of Law Examiners, in her Official Capacity, Board of Law Examiners of Texas; Colleen McHugh, President of the State Bar of Texas, in her Official Capacity; State Bar of Texas and the Unauthorized Practice of Law Committee Of The Supreme Court Of Texas, are the Respondents.

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To The Honorable Chief Justice of the United States Supreme Court and the Associate Justices of the Supreme Court:

Julius J. Larry III, the Petitioner, prays that a writ of certiorari issue to review the decision of the Supreme Court of Texas that "voided" Petitioner's bar examination scores and revoked his law license without notice or a hearing, in violation of Petitioner's 14th amendment due process rights, based on his liberty interest in his law license and occupation.

OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED BY THE COURTS BELOW

There are no reports of opinions below. The Texas Supreme Court sent a letter to Petitioner where it set out the Court's findings and decision. Appendix B.

GROUNDS UPON WHICH THE JURISDICTION OF THE SUPREME COURT IS INVOKED

Under 28 U.S.C. §1257(3), the United States Supreme Court has jurisdiction to review, by writ of certiorari,

> **"Final judgments or decrees rendered by the highest court of a State in which a decision could be had...Where any title, right, privilege or immunity is specially set up or claimed under the Constitution... ".**

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED IN THIS CASE

This case involves a decision of whether Petitioner has a liberty interest in his law license and occupation that rises to the level of a constitutionally protected right under the Due Process Clause, 14th amendment, U.S. Constitution.

Rule II (b) of the Rules Governing Admission to the State Bar of Texas was applied retroactively to Petitioner and is unconstitutional as applied to Petitioner. The Rules and Regulations are contained in full text in Appendix F.

STATEMENT OF THE CASE

The Petitioner graduated magna cum laude from an ABA-approved and accredited law school, Thurgood Marshall School of Law, Texas Southern University, Houston, Texas, in May, 1984. Although Petitioner was qualified for admission to the State Bar of Texas, for (8) eight years, the Texas Board of Law Examiners refused to allow Petitioner to take the bar examination allegedly due to his not having repaid all students loans and child support arrearage. In January 1992, Petitioner was given permission to take the Texas bar exam. He took the February, 1992 exam and passed all parts. He was granted a probationary license for two years. The Board extended the license past the two-year period.

In April 1996, Rachel Martin, Executive Director of the Texas Board of Law Examiners, informed Petitioner that she had read his fee application in the *Barnes v. Breeden* case. After a lengthy discussion regarding the State bar, the Petitioner opined that he would never voluntarily join the Texas bar because the State bar discriminates against minorities, especially African American lawyers. Rachel

Martin became very angry and informed Petitioner that she was "voiding" his bar exam scores and he would have to retake the bar exam. Petitioner requested that she put in writing that she was voiding his bar exam scores. When Petitioner did not receive a letter regarding the voiding of his bar scores, he wrote a letter to Chief Justice Thomas R. Phillips, Supreme Court of Texas. See Appendix A.

Chief Justice Phillips, through his Administrative Assistant, William Willis, responded and explained that the Board of Law Examiners voided Petitioner's bar exam scores and there was never a court order from the Supreme Court directing the Board to do so. See Appendix B.

The Unauthorized Practice of Law Committee of the Supreme Court of Texas filed suit against Petitioner, claiming that he was engaged in the unauthorized practice of law because his law license was taken on May 1, 1995. An injunction was granted against Petitioner and his law firm bank accounts were closed by court order. See Appendix G. Petitioner is being forced into bankruptcy at this writing.

The Supreme Court of Texas instructed Petitioner to pay his State Bar dues to cover the period 5/1/95 to 5/1/96. Petitioner paid his State bar dues which were received by the Texas bar on May 10, 1995. At no time did the State bar ever inform Petitioner that he was not a member. The State bar never returned Petitioner's bar dues. See Appendix C.

The Supreme Court of Texas never sent Petitioner a letter informing him that the Court was "voiding" his bar exam scores or revoking his license to practice law. To this date, no such letter has been sent to Petitioner.

This Court should GRANT Petitioner's emergency injunction or temporary restraining order because:

1. **The Board of Law Examiners lacked authority to make findings regarding Petitioner's moral character and fitness in 1995 or 1996.**

2. **No hearing or compliance hearing was held and no notice was given to Petitioner.**

3. **Petitioner had not requested a hearing to determine or redetermine his moral character and fitness.**

4. **Petitioner had not applied for a probationary license or regular license.**

5. **The Rules Governing Admission to the Bar of Texas have the same effect as statutes.**

6. **There is no evidence to support the Board's voiding of Petitioner's bar scores and license through retroactive application of Rule II (b) -an ex post factor law.**

7. **Petitioner was never disciplined by the State bar of Texas or any other bar association.**

8. **Petitioner practiced under the color of law and authority of the Texas Supreme Court which accepted his dues payment and never returned them for the period 5/1/95 - 5/1/96.**

9. **The Texas Supreme Court never sent an order to Petitioner that his license number had been rescinded.**

10. Petitioner is suffering irreparable harm and there is no adequate remedy at law.

ARGUMENT

The Due Process Clause of the Fourteenth Amendment requires some form of hearing before an individual is finally deprived of a protected property or liberty interest. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148, 71 L.Ed. 2d 265 (1982). In the usual case, due process requires a hearing prior to a state's initial interference with an individual's protected property or liberty interest. See, *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972) (due process required a hearing before the state authorized its agents to seize property in a debtor's possession); *Bell v. Burson*, 402 U.S. 535, 91 S.Ct. 1586, 29 L. Ed. 2d 90 (1971) (driver's license could not be summarily taken without a prior hearing).

Although the terms 'liberty' and 'property' are broad and not defined with exactness, the Supreme Court has construed these terms in a number of cases. "Liberty" is not confined to mere freedom from bodily restraint but extends to the full range of conduct which the individual is free to pursue. *Bolling v. Sharpe*, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954). Contemplated within the meaning of 'liberty' is the right to practice any of the common occupations of life, and for others to engage the individual to perform those acts which are his occupation. These rights are within the Fourteenth Amendment. *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L. Ed. 1042 (1923).

Petitioner Larry is seeking to engage in his occupation as a civil rights lawyer. This is a liberty interest protected by the 14th amendment. Petitioner is entitled to a hearing

conforming to minimal requirements of procedural due process of notice and an opportunity to be heard.

The Court's attention is directed to *Clark v. Board of Law Examiners of the State of Texas*, 1996 WL 426018 (Tex. App. - Austin, July 31, 1996), which is contained in Appendix E. In the *Clark* case, the Texas Board of Law Examiners held a compliance hearing regarding whether Clark failed to abide by conditions of his probationary license. The Board made findings regarding Clark's moral character and fitness, although Clark had not requested a hearing to redetermine his moral character and fitness and had not applied for another probationary or regular license.

The Board recommended that Clark's probationary law license be revoked and voided his bar exam scores. The 126th District Court of Travis County affirmed the Board's decision and Clark appealed.

The Court of Appeals reversed the district court. The Court held that the Board is entitled to make character and fitness findings on three occasions: (1) when the candidate files a declaration of intent to study law; (2) when the candidate files an application requesting to take the bar examination; and (3) when a chemically dependent, probationary licensee applies for another probationary or regular license. See, Tex. Government Code Ann. §§ 82.030 (a); 82.038 (f) (West Supp. 1996).

In the case at bar, the Board obviously made findings in 1995 or 1996 regarding Petitioner's moral character and fitness although no notice of such hearing was given to Petitioner. These findings were made years after Petitioner filed his declaration of intent to study law and an application to take the bar examination. Petitioner filed his intent to study law in the early 1980's. He filed his original

application to take the Texas bar exam in 1983 to take the July 1984 exam. Petitioner did not request a hearing to redetermine his moral character and fitness. Petitioner had not applied for another probationary license or a regular license. Petitioner was never found to be chemically dependent. Therefore, none of the statutory grants of authority to redetermine a candidate's moral character and fitness were present in 1995 or 1996.

The Board failed to give Petitioner notice that it intended to void his bar scores. Most egregiously, the Board, according to the Texas Supreme Court, utilized Rule II (b) to void Petitioner's bar exam scores. Rule II (b) states, in pertinent part: "If an applicant has not satisfied all requirements of admission within two years of notification that the applicant has passed all parts of the Texas Bar Exam, the applicant's examination scores shall be void, provided, however, that the Board may waive this provision for good cause shown." Rule II (b) applies, if at all, at the two (2) year point after the candidate has passed all parts of the bar exam and not met all admissions requirements.

In Petitioner's case, the Board waived Rule II (b) because it waited past two (2) years. There is not one iota of evidence that Petitioner had not met all requirements for admission to the State Bar of Texas. There was no hearing that reached this conclusion. The retroactive application of Rule II (b) to void Petitioner's bar scores is unconstitutional as applied to Petitioner.

CONCLUSION

This Court should GRANT Petitioner's injunction and temporary restraining order because the Board had no authority to redetermine Petitioner's moral character and fitness, and void his bar scores without notice and the opportunity for Petitioner to be heard. This taking of Petitioner's property and liberty interest is unconstitutional. Petitioner has no adequate remedy at law and is suffering irreparable harm.

Failure to give notice is a sufficient ground standing alone for this Court to GRANT an injunction. Rule 15c of the Rules Governing Admission to the State Bar of Texas mandates that when the Board holds a hearing to redetermine a candidate's moral character and fitness, it must provide the applicant with notice of the subject matter of the hearing. *Tex. State Bd. Of Pharmacy v. Seely*, 764 S.W. 2d 806 (Tex. App. - Austin 1988, writ denied).

Respectfully submitted,

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APPENDIX A

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July 15, 1996

Chief Justice Thomas R. Phillips
Texas Supreme Court
P.O. Box 12248
Austin, Texas 78711

RE: "Voiding" of Bar Examination Scores-
Julius J. Larry III

Dear Chief Justice:

The purpose of this is letter is to request a copy of this Court's Order that directed the Board of Law Examiners to "void" the bar exam scores of Julius J. Larry III, three years after he passed the examination. Also, please provide a copy of the order that directed the Board of Law Examiners to instruct Mr. Larry to re-take the bar examination, although he passed the exam the first time he took it.

Thank you very much for your assistance in these serious violations of Mr. Larry's constitutional rights. As a result of the Board's illegal actions, Mr. Larry, who only practiced in federal court, has been forced resond to numerous show cause orders and appear at Show Cause hearings.

Although Mr. Larry has not been disciplined by any bar association for violation of any disciplinary rules, his name has been submitted to the National Attorney Discipline Data Bank. As a direct result of the Board's illegal action in "voiding" Mr. Larry's bar scores, he was "disbarred" by the Eastern District of Texas. Mr. Larry has not done anything wrong. He expressed an opinion that he believed the State Bar of Texas discriminates against African American lawyers and he would not voluntarily join that organization.

Sincerely,

Julius J. Larry, III

cc: Chief Judge Richard A. Schell
Chief Judge-Fifth Circuit
Chief Judge-Norman Black
Judge Kenneth Hoyt

APPENDIX B

THE SUPREME COURT OF TEXAS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711
TEL. (512) 463-1312
FAX (512) 463- 1365

CHIEF JUSTICE
THOMAS R. PHILLIPS

JUSTICES
RAUL A GONZALES
NATHAN L. HECHT
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRICILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

October 3, 1996

Mr. Julius J. Larry, III
1834 Southmore Blvd.
Houston, Texas 77004

Dear Mr. Larry:

I have been asked to respond to your request for a copy of a Supreme Court order directing the Board of Law Examiners to void your bar exam scores and a copy of this Court's order directing you to take the bar examination.

We are informed that the Board of Law Examiners voided your examination scores pursuant to Rule II(b) of the **Rules Governing Admission to the Bar of Texas.** That provision of Rules states that if an applicant has not satisfied all requirements for admission within two years of notification that the applicant has passed all parts of the Texas Bar Exam, "the Applicant's examination scores shall be void, provided, however, that the Board may waive this provision for good cause shown."

We are further informed that, in 1992, you were given a probationary license which expired on May 1, 1995, that you did not file an application for a renewal or conversion to a regular license, and that the Board thereupon enforced its policy that when a probationary license expires without maturing into a regular license, Rule II(b) operates to void that applicant's exam scores.

Thus, there has never existed any order of this Court specifically addressed to your particular scores or the requirement that you again take the exam. The only pertinent order of this Court is that which promulgated Rule II(b), as well as a number of other changes in the Rules.

Sincerely,

/s/ William L. Willis
William L. Willis

APPENDIX C

STATE BAR OF TEXAS

MEMBERSHIP DEPARTMENT

November 7, 1996

Mr, Julius Larry
River Oaks Tower
3730 Kirby Dr., Ste.1180
Houston, TX 77098-3927

As requested, this facsimile message will confirm that you paid $148.00 for your 1995 State Bar of Texas membership dues on May 10, 1995.

Cordially yours,

Arlene O'Brien
Administrative Assistant

/ao

APPENDIX D

STATE OF TEXAS §
§
COUNTY OF HARRIS §

AFFIDAVIT IN SUPPORT OF INJUNCTIVE RELIEF

Before Me the Undersigned Notary Public, personally appeared JULIUS J. LARRY, III known to me as the person making this Affidavit, and after having been duly sworn, state the following:

My name is Julius J. Larry, III. I am a citizen of the United States and a resident of Houston, Harris County, Texas. I am competent to make this Affidavit and the facts contained herein are based on my personal knowledge.

The Texas Board of Examiners voided my bar exams without giving me notice or having a hearing. Rachel Martin, the Board's Executive Director, called me in April 1996 to discuss my fee application in the **Barnes** case. She then told me that she was voiding my bar scores and I would have to take the bar exam again.

I asked her to put those statements in writing. She never sent me a letter, so I wrote to the Chief Justice of the Texas Supreme Court. He directed the Administrative Assistant to respond. Exhibit 1 is a true and correct copy of the letter that was sent to me explaining how my bar scores were voided, allegedly, pursuant to Rule II (b).

I never requested a character and fitness hearing in 1995 or 1996. I did not apply for a probationary license. I filed a declaration of intent to study law in 1981, as I best recollect, but certainly not in 1995 or 1996. I originally applied for admission to the state bar in 1984.

I paid dues to the Texas Supreme Court covering May 1, 1995 through May 1, 1996. The Texas Supreme Court accepted my dues and never told me that they were voiding my bar scores or canceling my license or bar membership. The Texas Supreme Court - Unauthorized Practice of Law Committee sued me in August, 1996. I removed the matter to federal district court.

s/_____
JULIUS J. LARRY, III

SUBSCRIBED TO AND SWORN THIS 7th day of November, 1996.

s/ Diane Caldwell
NOTARY PUBLIC OF TEXAS

DIANE CALDWELL
NOTARY PUBLIC
State of Texas
Comm. Exp. 12-31-99

APPENDIX E

AUTHORIZED FOR EDUCATIONAL USE ONLY
(Cite as: 1996 WL 426018 (Tex.App.-Austin))

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

Collen A. CLARK, Appellant,
v.
BOARD OF LAW EXAMINERS OF THE STATE OF TEXAS, Appellee.

No. 03-95-00715-CV.

Court of Appeals of Texas,
Austin.

July 31, 1996.

Attorney brought action for judicial review of order issued by Board of Law Examiners which recommended that his probationary law license be revoked. The 126th Judicial District Court, Travis County, Mary Pearl Williams, J., affirmed. Attorney appealed. The Court of Appeals, Aboussie, J., held that: (1) Board lacked authority at compliance hearing to make findings regarding attorney's moral character and fitness, and (2) appropriate remedy to redress Board's error was to reverse District Court's judgment and remand cause to Board for further proceedings.

Reversed and remanded.

[1] ATTORNEY AND CLIENT 58
45k58

Board of Law Examiners lacked authority, at compliance hearing addressing attorney's failure to abide by conditions of his probationary law license, to make findings regarding attorney's moral character and fitness, where attorney had not requested hearing to redetermine his moral character and fitness, and attorney had not applied for another probationary license or regular license. V.T.C.A., Government Code §§82.030(a), 82.038(f); Rules Governing Admission to the Bar, Rules VIII, XX, XV, XVI(g)(2)(B).

[2] ATTORNEY AND CLIENT 2
45k2

Rules Governing Admission to Bar have same effect as statutes.

[3] ATTORNEY AND CLIENT 58
45k58

Board of Law Examiners improperly, at compliance hearing addressing attorney's failure to abide by conditions of his probationary law license, made findings regarding attorney's moral character and fitness, even assuming Board had authority to make such findings at compliance hearings in general, where Board had failed to give attorney notice that it intended to go beyond scope of determining whether he had complied with terms of his probationary license and reevaluate his moral character and fitness. Rules Governing Admission to the Bar, Rule XV(c).

[4] ATTORNEY AND CLIENT 58
45k58

When Board of Law Examiners holds hearing to redetermine candidate's moral character and fitness, it must provide applicant with notice of subject matter of hearing. Rules Governing Admission to the Bar, Rule XV(c).

[5] ATTORNEY AND CLIENT 58
45k58
Appropriate remedy to redress Board of Law Examiners' error, at compliance hearing addressing attorney's failure to abide by conditions of his probationary law license, in making findings regarding attorney's moral character and fitness was to reverse trial court judgment affirming Board's order which had recommended revocation of attorney's probationary law license and remand cause to Board for further proceedings. V.T.C.A., Government Code § 2001.174(2)(A,B).

Before CARROLL, C.J., and ABOUSSIE and KIDD, JJ.

ABOUSSIE,Justice.

*1 After holding a compliance hearing, the Board of Law Examiners (the "Board") recommended that appellant Collen A. Clark's probationary law license be revoked. Clark filed suit in district court, seeking judicial review of the Board's order. See Tex.R. Governing Bar Admission 15(j)(1). The trial court affirmed the Board's order. In four points of error, Clark argues that (1) the Board exceeded its authority in concluding that Clark did not possess good moral character and fitness; (2) the Board did not give Clark proper notice of the subject matter of the compliance hearing; (3) the Board's findings that Clark did not comply with the terms of his probationary license are not supported by substantial evidence; and (4) the Board improperly voided Clark's examination scores. We will reverse the trial court's judgment and remand the cause to the Board for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

Clark originally took the bar examination and applied for admission to the State Bar of Texas in 1990. Based on his previous DWI arrests and conviction, the Board

conditionally approved Clark's character and recommended that he be issued a temporary law license, contingent on his continued sobriety. Clark again applied for a permanent law license in 1992. This application revealed that Clark had been again arrested for DWI in 1991. After a hearing, the Board found that Clark suffered from chemical dependency. In 1992, the Board recommended that Clark be issued a probationary license conditioned, in part, on his regular attendance of Alcoholics Anonymous ("AA") and Lawyers Caring for Lawyers ("LCL") meetings.

Clark petitioned for judicial review of the Board's 1992 order finding him chemically dependent. While this suit remained pending, Clark failed to meet the conditions of the order, and the Board held a compliance hearing in 1993. Clark ultimately dismissed his suit, and he and the Board consummated an agreed order, dated January 13, 1994. This order recommended that Clark be issued another probationary license requiring, in part, that he regularly attend AA and LCL meetings pursuant to a defined schedule. The terms of this order, recommending Clark's third conditional license, form the subject of this appeal.

Once again, Clark failed to fully comply with the terms of his conditional license. In a notice dated January 18, 1995, the Board notified Clark to attend a February 17, 1995, compliance hearing addressing his failure to abide by the conditions of his probationary license.

The notice indicated that "[t]he general issue to be considered at the hearing is whether your probationary license would be revoked due to your failure to abide by one or more of its conditions." The notice further detailed multiple instances of Clark's noncompliance, including a failure to attend and/or to document specific AA and LCL meetings. The notice also recounted a letter that Clark wrote to the Board informing it that he would not attend AA meetings during his vacation in St. Thomas. The notice did not relate that Clark's moral character and fitness would be

the subject of any hearing. Furthermore, the letter did not state that the Board would consider Clark's relicensure for either another probationary or regular license.

*2 Following the hearing, on March 22, 1995, the Board issued an order recommending that Clark's probationary license be revoked. Clark does not challenge the Board's authority to make such a recommendation. However, the Board did not limit its decision to revocation. Instead, the order continued by further finding that Clark lacked good moral character fitness, ordering that Clark is not entitled to a new license, either probationary or regular, voiding his 1990 bar exam scores, and requiring him to apply for and pass another bar examination before applying for a law license.

DISCUSSION

[1] In his first point of error, Clark complains that the Board exceeded its statutory authority in making findings of his moral character and fitness at a proceeding limited to the issue of compliance only. We agree.

The Board is entitled to make character and fitness findings on three occasions: (1) when the candidate files a declaration of intent to study law; (2) when the candidate files an application requesting to take the bar examination; and (3) when a chemically dependent, probationary licensee applies for another probationary or regular license. See Tex. Gov't Code Ann. §§ 82.030(a), 82.038(f) (West Supp. 1996).

[2] The Rules Governing Admission to the Bar of Texas (the "Rules") detail the procedures for the Board's reconsideration of a candidate's moral character and fitness. The Rules further detail the procedures for the Board's initial recommendation of a probationary license and the recommendation of a subsequent license upon a probationary licensee's reapplication for either another probationary

license or a regular license. See Tex.R. Governing Bar Admission 16. These Rules have the same effect as statutes. See Board of Law Examiners v. Stevens, 868 S.W.2d 773, 776 (Tex.), cert. denied, ---U.S.---, 114 S.Ct. 2676, 129 L.Ed.2d 811 (1994).

The Board contends that Rule 16(g)(2)(B) authorizes it to make findings of moral character and fitness during a compliance hearing. Rule 16(g)(2)(B) provides:

> (g) After a hearing held subject to the provisions of Rule XV herein on the redetermination of the character and fitness of the Probationary Licensee, the Board may:
>
> ...
>
> (2) recommend, upon a finding that a condition of the Probationary License has been violated:
>
> ...
>
> (B) termination or immediate revocation of the Probationary License.

Tex.R. Governing Bar Admission 16(g)(2)(B). The Board urges that this Rule allows it to make character and fitness inquiries during a compliance hearing and, on a finding that Clark had violated conditions if his probationary license, to terminate his probationary license. We disagree.

By its express terms, the authority granted in Rule 16(g) requires that the Board first conduct a hearing to redetermine a candidate's moral character and fitness. Tex.R. Governing Bar Admission 16(g). Rule 16(g) presupposes that the Board already has the authority to redetermine a candidate's moral character and fitness. Therefore, Rule 16(g) itself cannot be a grant of authority to redetermine a candidate's moral character and fitness. Rule 16(g) simply states what the Board can recommend once it has held a character redetermination **hearing** pursuant to Rule 15.

*3 Neither does Rule 15 grant the Board the authority to redetermine a candidate's moral character and fitness. See Tex.R. Governing Bar Admission 15. Rule 15 provides when and how the Board shall conduct hearings on the issue of moral character and fitness. When and how to conduct a hearing on a matter is a different issue from whether the Board possesses the initial authority to consider the matter at all. For example, if a candidate does not request a hearing, the Board need not grant one and can make a final recommendation of the candidate's moral character and fitness without a hearing. See id. Therefore, Rule 15's directives on when and how to conduct a hearing do not grant the Board the authority to make a redetermination of a candidate's moral character and fitness. Instead, Rules 8 and 10 grant the Board the authority to determine a candidate's moral character and fitness when (i) the candidate files a declaration of intent to study law, and (ii) the candidate files an application to take the bar examination. See Tex.R. Governing Bar Admission 8(a), 10(a). Once having been given the authority to determine moral character and fitness, Rules 8 and 10 provide that the Board may hold a hearing on the matter pursuant to Rule 15. See Tex.R. Governing Bar Admission 8(b), 10(c). Therefore, Rule 15 presupposes that authority has already been granted and then proceeds to detail how that authority may be executed.

In the instant cause, the Board made findings at the compliance **hearing** of Clark's moral character and fitness years after he filed a declaration of intent to study law and an application to take the **bar examination**. Clark did not request a **hearing** to redetermine his moral character and fitness. At the time of the compliance **hearing**, he did not apply for another probationary license or a regular license. Therefore, none of the statutory grants of authority to redetermine a candidate's moral character and fitness were present. See Tex. Gov't Code Ann. §§ 82.030, 82.038 (West Supp. 1996). Because the Board lacked the statutory authority to redetermine Clark's moral character and fitness

at the compliance hearing, we sustain Clark's first point of error.

[3][4] Even if the Board has the authority to determine a candidate's moral character and fitness at a compliance hearing, the Board erred in doing so in the instant cause. The Board failed to give Clark notice that it intended to go beyond the scope of determining whether he had complied with the terms of his probationary license and reevaluate his moral character and fitness. When the Board holds a hearing to redetermine a candidate's moral character and fitness, it must provide the applicant with notice of the subject matter of the hearing. See Tex.R. Governing Bar Admission 15(c); see also Texas State Bd. of Pharmacy v. Seely, 764 S.W.2d 806, 813-15 (Tex.App.--Austin 1988, writ denied); Madden v. Texas Bd. of Chiropratic Examiners, 663 S.W.2d 622,626-27 (Tex.App.--Austin 1983, writ ref'd n.r.e.). In the instant cause, the compliance hearing notice did not indicate that the Board would reconsider Clark's moral character and fitness.

*4 [5] Having sustained Clark's first point of error, we must next consider the appropriate remedy. The Administrative Procedure Act (the "APA") does not govern Board procedures, however, reference to the APA sections which address the scope of judicial review under the substantial evidence rule is instructive. See Stevens, 868 S.W.2d. at 777. Texas Government Code section 2001.174(2) provides in pertinent part:

> If the law authorizes review of a decision in a contested case under the substantial evidence rule or if the law does not define the scope of judicial review, a court may not substitute its judgment for the judgment of the state agency on the weight of the evidence on questions committed to agency discretion, but:

> ...
> (2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
>
> ...
> (A) in violation of a constitutional or statutory provision; [or]
> (B) in excess of the agency's statutory authority...

Tex. Gov't Code Ann. § 2001.174(2)(A)(B). Government Code section 2001.174(2) checks agency authority by clearly authorizing the court to reverse agency decisions upon a finding of agency error. In addition, the statute protects agencies from judicial usurpation of agency power; the court, through remand, must allow the agency to have a chance to correct its errors in further proceedings. See Goeke v. Houston Lighting & Power Co., 761 S.W.2d 835, 846 (Tex.App.--Austin 1989), rev'd on other grounds, 797 S.W.2d 12 (Tex. 1990) ("the Legislature intended ... that the agency be given a meaningful opportunity to exercise its delegated powers to correct any error of law upon which the reviewing court reversed the agency decision ....").

In redetermining Clark's moral character and fitness at a compliance hearing, without notice, the Board exceeded its authority under both the governing statutes and the Rules. Because Clark's substantial rights have been affected, we reverse the trial court's judgment and remand the cause to the Board. Because we have sustained Clark's first point of error and ordered a general remand, we need not consider Clark's remaining points of error.

CONCLUSION

We sustain appellant's first point of error.

We reverse the trial court's judgment and remand the cause to the Board for further proceedings.

END OF DOCUMENT

APPENDIX F

Rules Governing Admission to the
Bar of Texas

ADOPTED BY

**THE SUPREME COURT
OF TEXAS**

Effective December 8, 1995

THE SUPREME COURT OF TEXAS

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Raul A. Gonzalez	
Greg Abbott	
Nathan L. Hecht	
John Cornyn	
Craig Enoch	
Rose Spector	
Priscilla Owen	
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About the Board of Law Examiners ....

The Board of Law Examiners is the judicial agency responsible for administering the process of determining that applicants seeking to be licensed to practice law in Texas meet the qualifications set by the Supreme Court of Texas. The Board itself has nine members, appointed biennially by the Supreme Court. Each member must be an attorney, at least 35 years of age, with a minimum of ten years of experience in the practice of law. The Board has approximately seventeen full-time employees, including an Executive Director, Director of Eligibility and Examination, Director of Character and Fitness, Staff Attorney, and other employees who assist in carrying out the daily functions of the agency.

The Board's rules are adopted and promulgated by the Supreme Court of Texas. Acting under these rules, the Board investigates the character and fitness of students studying law in ABA-approved law schools in Texas who intend to apply for admission in Texas, as well as that of all applicants for admission to the Bar; holds hearings, when indicated, on the moral character and fitness of its applicants; makes determinations as to whether applicants have met all other Texas requirements for licensure; prepares, administers, and grades the Texas Bar Examination twice yearly and the Short Form Examination four times yearly. When the Board determines that a candidate has met all requirements, the Board certifies the applicant to the Supreme Court as being eligible for licensure. While the Board makes these determinations as to eligibility, only the Supreme Court has the authority to issue a law license.

In its character and fitness investigations, the Board looks into such matters as whether the candidate has been involved in criminal activities, fraudulent practices, financial irresponsibility indicative of a lack of respect for legal obligations, failure to comply with court orders, and other activities which have a clear and rational connection with the

responsibilities an attorney owes to clients, the courts, and the legal profession. The Board is charged with making a determination, as to whether each candidate for admission to practice law, has the *present* good moral character and fitness required for admission to the Bar of Texas. Therefore, while a candidate is not automatically barred from becoming an attorney if any of these matters appear in his or her history, the Board does make a determination as to whether such *past* activities have a *present* bearing on the individual's character and fitness at the time admission is sought. Often, such an individual may be required to appear at a public hearing before the full Board, so that the Board can consider all relevant evidence in order to decide whether such problems rise to the level of a lack of present good moral character and fitness. After such a hearing, if the Board finds that the activities do evidence a lack of present good moral character and fitness, the Board will render an order to that effect and decline to recommend the individual to the Supreme Court for licensure and admission to the Bar of Texas.

The Board conducts its business and carries out its responsibilities in meetings conducted approximately six times yearly. The Board is subject to both the Open Meetings Act and the Open Records Act, with certain exceptions authorized by statute and order of the Supreme Court, and notices of the Board's meetings are posted with the Secretary of State and published in the Texas Register, as required by law. The agenda of each board meeting includes an item entitled "Communications from the Public," and members of the public are invited and encouraged to attend and participate in the Board's meetings.

Each year, the Board processes the Declarations of Intention to Study Law filed by approximately 2,200 students at ABA-approved Texas law schools and approximately 250 applications of law graduates to take the Texas Bar Examination. In addition, each year the Board acts on about 4250 applications to be admitted without examination and/or

for the Short Form Examination. Out of all these applicants for admission to the Bar, the Board annually recommends that the Supreme Court grant Texas law licenses to approximately 2,500 individuals.

Once applicants are certified to the Supreme Court as eligible for licensure, the Board's jurisdiction over these individuals ceases. All disciplinary and grievance matters concerning licensed attorneys fall under the jurisdiction of the State Bar of Texas.

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RULES OF THE SUPREME COURT GOVERNING ADMISSION TO THE BAR OF TEXAS

RULE I
DEFINITIONS AND GENERAL PROVISIONS

(a) Frequently used terms are defined as follows:

(1) "Applicant" shall mean a person who files with the Board any Application or Re-Application to take the Texas Bar Examination, the Short Form Examination, to be admitted without examination, or for Certification as a Foreign Legal Consultant.

(2) "Application" shall mean an Application or re-Application to take the Texas Bar Examination, the Short Form Examination, to be admitted without examination to the Texas Bar, or for Certification as a Foreign Legal Consultant.

(3) "Approved law school" shall mean a law school approved by the American Bar Association.

(4) "Board" shall mean the Board of Law Examiners.

(5) "Chemical dependency: shall mean:

(i) the abuse of alcohol or a controlled substance;

(ii) a pathological use of alcohol or a controlled substance that chronically impairs the Applicant's ability to competently provide legal advice or services; or

(iii) a physiological or physical dependence on alcohol or a controlled substance.

(6) "Controlled substance" shall have the meaning assigned by Section 462.001, Health and Safety Code.

(7) "Declarant" shall mean a person who files with the Board a Declaration of Intention to Study Law.

(8) "Declaration" shall mean a Declaration of Intention to Study Law.

(9) "District Committee" shall mean a District Committee on Admissions.

(10) "Short Form Examination" shall mean the shortened form of the bar examination available for Applicants qualified under Rule XIII.

(11) "State" shall mean any state or territory of the United States, as well as the District of Columbia.

(12) "Supreme Court" shall mean the Supreme Court of Texas.

(13) "Texas Bar Examination" shall mean the full bar examination.

(14) "Treatment" shall have the meaning assigned by Section 462.001, Health and Safety Code.

(15) "Treatment facility" shall have the meaning assigned by Section 462.001, Health and Safety Code.

(b) The terms "admitted", "admitted to the Bar," "admitted to the Texas Bar," "licensed," and "licensed to practice law in Texas" are used interchangeably in these Rules.

(c) If any completed document required to be filed hereunder is placed, along with all required fees, in a postpaid envelope properly addressed to the Board and then deposited in a post office or official depository under the care and custody of the United States Postal Service, such document shall be deemed timely filed if the envelope bears a legible U.S. Postal Service post-mark which is dated on or before the applicable deadline date.

(d) Neither the Board nor any District Committee shall disclose to any third party any information obtained with respect to the character or fitness of any Applicant, Declarant, or probationary licensee, except:

(1) upon written authority of such Applicant or Declarant, or probationary licensee;

(2) in response to a valid subpoena from a court of competent jurisdiction; or

(3) to the Office of the General Counsel of the State Bar of Texas or to the Texas Unauthorized Practice of Law Committee.

RULE II
GENERAL ELIGIBILITY REQUIREMENTS FOR ADMISSION TO THE TEXAS BAR

(a) To be eligible for admission or reinstatement as a licensed attorney in Texas, the Applicant shall:

(1) comply with all applicable requirements of these Rules;

(2) be at least eighteen (18) years of age;

(3) be of present good moral character and fitness;

(4) have completed the law study required under these Rules, unless specifically exempted under the terms of Rule XIII;

(5) qualify under one of the following categories:

(A) be a United States citizen;

(B) be a United States National;

(C) be an alien lawfully admitted for permanent residence;

(D) be an alien lawfully admitted for temporary residence under § USC Sec. 1255;

(E) be admitted as a refugee under 8 USC Sec. 1157; or

(F) be granted asylum under 8 USC Sec. 1158.

If the Applicant does not qualify for a regular Texas law license due to an inability to meet the requirement of this

Rule II(a)(5), the Applicant may be issued a Probationary License, upon meeting all other requirements of these rules, if the Applicant holds one or more of the following valid non-immigrant visa statuses entitling him or her lawfully to work in the United States: H-IB, TC, L-1, or F-1 Practical Training. A Probationary License issued under this rule shall be valid concurrently with such valid visa status, and, with the exception of an F-1 Practical Training visa status, shall entitle the Applicant to be employed only by the employer named in the petition of application through which such status was obtained.

(6) have satisfactorily completed the Texas Bar Examination, unless exempted from the Bar Examination under Rule XIII (but in no event shall an Applicant for reinstatement be so exempted).

(7) have satisfactorily completed the Multistate Professional Responsibility Examination; and

(8) be willing to take the oath required of attorneys in Texas;

(9) pay the appropriate licensing fee to the Clerk of Supreme Court of Texas; and

(10) enroll in the State Bar of Texas by filing an enrollment form and paying the appropriate fees and assessments due within the time specified in Article III, Sec. 2(A) of the State Bar Rules.

(b) If an Applicant has not satisfied all requirements for admission to the Texas Bar within two years from the date that the Applicant is notified that(s)he has passed all parts of the Texas Bar Examination, the Applicant's examination scores shall be void, provided, however, that the Board may waive this provision for good cause shown.

RULE III
LAW STUDY REQUIREMENT

(a) The law study requirement for eligibility of an Applicant to take the Texas Bar Examination, unless otherwise provided by these Rules, is met by:

(1) graduation with a J.D. degree or its equivalent from an approved law school;

(2) satisfaction of all requirements for graduation from an approved law school with a J.D. degree or its equivalent; or

(3) study of law in an approved law school or schools by satisfying all requirements for graduation with a J.D. degree or its equivalent, except for not more than four semester hours or its equivalent in quarter hours; provided, however, that no person shall be licensed to practice law until graduation or satisfaction of all requirements for graduation, unless specifically excepted hereunder. If an Applicant under this subsection has not graduated with a J. D. degree or satisfied all requirements for graduation within two years from the date that all parts of the bar examination are satisfactorily completed, the Applicant's examination scores shall be void.

(b) If a law school was an approved law school at the time the Applicant enrolled, the law school shall be deemed an approved law school as to that Applicant for four years thereafter, regardless of its status at the date of the Applicant's graduation. If a law school was an approved law school at the time the Applicant graduated, the Applicant shall be deemed to be a graduate of an approved law school, regardless of the status of the school at the time the Applicant enrolled.

(c) If a person graduated from a law school that was not an approved law school at either the time the person

enrolled or at the time the person graduated, the person is not a graduate of an approved law school even if the law school later became or becomes an approved law school.

RULE IV
GOOD MORAL CHARACTER AND FITNESS REQUIREMENT

(a) No one shall be eligible for admission to the Texas Bar or for certification as a Foreign Legal Consultant until the investigation of such person's moral character and fitness has been completed, and it has been determined by the Board that such individual possesses good moral character and fitness.

(b) Good moral character is a functional assessment of character and fitness of a prospective lawyer. The purpose of requiring an Applicant to possess present good moral character is to exclude from the practice of law those persons possessing character traits that are likely to result in injury to future clients, in the obstruction of the administration of justice, or in a violation of the Texas Disciplinary Rules and Professional Conduct. These character traits usually involve either dishonesty or lack of trustworthiness in carrying out responsibilities. There may be other character traits that are relevant in the admission process, but such traits must have a rational connection with the Applicant's present fitness or capacity to practice law and accordingly must relate to the legitimate interests of Texas in protecting prospective clients and in safeguarding the system of justice within Texas.

(c) Fitness, as used in these Rules, is the assessment of mental and emotional health as it affects the competence of a prospective lawyer. The purpose of requiring an Applicant to possess this fitness is to exclude from the practice of law any person having a mental or emotional illness or condition which would be likely to prevent the person from carrying out duties to clients, courts or the

profession. A person may be of good moral character, but may be incapacitated from proper discharge of his or her duties as a lawyer by such illness or condition. The fitness required is a present fitness, and prior mental or emotional illness or conditions are relevant only so far as they indicate the existence of a present lack of fitness.

(d) The following provisions shall govern the determination of present good moral character and fitness of a Declarant or an Applicant who has been convicted of a felony in Texas or placed on probation for a felony with or without an adjudication of guilt in Texas, or who has been convicted or placed on probation with or without an adjudication of guilt in another jurisdiction for a crime which would be a felony in Texas. A Declarant or Applicant may be found lacking in present good moral character and fitness under this rule based on the underlying facts of a felony conviction or deferred adjudication, as well as based on the conviction or probation through deferred adjudication itself.

(1) The record of conviction or order of deferred adjudication is conclusive evidence of guilt.

(2) An individual guilty of a felony under this rule is conclusively deemed not to have present good moral character and fitness and shall not be permitted to file a Declaration of Intention to Study Law or an Application for a period of five years after the completion of the sentence and/or period of probation.

(3) Upon proof that a felony conviction or felony order of probation with or without adjudication of guilt has been set aside or reversed, the Declarant or Applicant shall be entitled to a new hearing before the Board for the purpose of determining whether, absent the record of conclusive evidence of guilt, the Declarant or Applicant possesses present good moral character and fitness.

(e) The following provisions shall govern the determination of present good moral character and fitness of a Declarant or Applicant who has been licensed to practice law in any jurisdiction and has been disciplined, or allowed to resign in lieu of discipline, in that jurisdiction.

(1) A certified copy of the order or judgment of discipline from the jurisdiction is prima facie evidence of the matters contained in such order or judgment, and a final adjudication in the other jurisdiction that the individual in question has committed professional misconduct is conclusive of the professional misconduct alleged in such order or judgment.

(2) An individual disciplined for professional misconduct in the course of practicing law in any jurisdiction or an individual who resigned in lieu of disciplinary action ("disciplined individual") is deemed not to have present good moral character and fitness and is therefore ineligibile to file an Application for Admission to the Texas Bar during the period of such discipline imposed by such jurisdiction, and in the case of disbarment or resignation in lieu of disciplinary action, until the disciplined individual has filed an application for reinstatement in the disciplining jurisdiction and obtained a final determination on that application.

Notwithstanding the foregoing provision of this subsection (e)(2) and except as provided in Rule IV(d)(2), if the period of discipline imposed by another jurisdiction exceeds five years, the disciplined individual may file an Application after the expiration of five years from the date of imposition of such discipline, provided that (s)he has obtained a final determination on his/her application for reinstatement in the disciplining jurisdiction.

(3) The only defenses available to an Applicant or Declarant under section (e) are outlined below and must be proved by clear and convincing evidence:

(A) The procedure followed in the disciplining jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.

(B) There was such an infirmity of proof establishing the misconduct in the other jurisdiction as to give rise to the clear conviction that the Board, consistent with its duty, should not accept as final the conclusion on the evidence reached in the disciplining jurisdiction.

(C) The deeming of lack of present good moral character and fitness by the Board during the period required under the provisions of section (e) would result in grave injustice.

(D) The misconduct for which the individual was disciplined does not constitute professional misconduct in Texas.

(4) If the Board determines that one or more of the foregoing defenses has been established, it shall render such orders as it deems necessary and appropriate.

(f) An individual who applies for admission to practice law in Texas or who files a petition for redetermination of present moral character and fitness after the expiration of the five-year period required under subsection (d)(2) above or after the completion of the disciplinary period assessed or ineligibility period imposed by any jurisdiction under subsection (e) above shall be required to prove, by a preponderance of the evidence:

(1) that the best interest of the public and the profession, as well as the ends of justice, would be served by his or her admission to practice law;

(2) that (s)he is of present good moral character and fitness; and

(3) that during the five years immediately preceding the present action, (s)he has been living a life of exemplary conduct.

(g) An individual who files a petition for redetermination of present moral character and fitness after a negative determination based on a felony conviction, felony probation with or without adjudication of guilt, or professional misconduct or resignation in lieu of disciplinary action and whose petition is denied after a hearing, is not eligible to file another petition for redetermination until after the expiration of three years from the date of the Board's order denying the preceding petition for redetermination.

RULE V
PROFESSIONAL RESPONSIBILITY EXAMINATION REQUIREMENT

(a) No Applicant for admission to the Texas Bar shall be issued a license to practice law in Texas until such person has furnished to the Board evidence that (s)he has passed the Multistate Professional Responsibility Examination (MPRE) with a scaled score of 85.

(b) A passing MPRE score is valid for five years from the date the MPRE is taken.

(c) If an Applicant has a valid, passing MPRE score on the date (s)he takes the Texas Bar Examination or Short Form Examination, the MPRE score is deemed to be valid for licensing purposes if the Applicant passes that particular Texas examination, even if the five-year period set out in (b) above expires before the Texas grades are released.

RULE VI
DECLARATION OF INTENTION TO STUDY LAW; GENERAL PROVISIONS

(A) Every person who is beginning law study in an approved law school in Texas for the first time (an "entrant") and intends to apply for admission to the Bar of Texas shall, unless prohibited from filing by these Rules, file with the Board a Declaration of Intention to Study Law, on a form promulgated by the Board.

(1) The Declaration shall show:

(A) the history, experience, and educational qualifications of the Declarant;

(B) the approved law school in which the Declarant is or was enrolled;

(C) the Declarant's criminal history;

(D) the Declarant's history of mental illness;

(E) the Declarant's history with regard to charges of fraud in any legal proceeding;

(F) the Declarant's involvement in any civil litigation or bankruptcy proceedings;

(G) the Declarant's willingness to take the oath required of attorneys in Texas;

(H) the Declarant's history as to compliance with court orders regarding child support and spousal support;

(I) the Declarant's history regarding repayment of federally guaranteed student loans;

(J) the Declarant's history regarding the filing of required federal income tax returns and the payment of federal income tax liability;

(K) the Declarant's history regarding payment to the IRS of payroll taxes (s)he collected as an employer of others; and

(L) such other information regarding the Declarant as the Board deems reasonably related to its investigation of the Declarant's moral character and fitness.

(2) The Board may require the Declarant to provide, in addition, such supporting documents relating to the Declarant as the Board deems reasonable.

(3) The Board may also require the Declarant to execute a consent form supplied by the Board, authorizing all persons, firms, officers, corporations, associations, organizations, and institutions to furnish to the Board or any of its authorized representatives, all relevant documents, records, or other information pertaining to the Declarant.

(b) The timely filing deadline for such Declaration, for which no late fees shall be charged, shall be as follows:

Fall entrants, December 1;
Regular Spring entrants, May 1;
Spring entrants at quarter-hour law schools, June 1;
Summer entrants, September 15.

(c) Declarations filed with the Board after the timely filing deadline will be accepted with the payment of applicable late fees as set forth in Rule XVIII, provided that, in the opinion of the Board, there is sufficient time for completion of the investigation of the late-filed Declaration. However, no Declarant shall be eligible to take the Texas Bar Examination, unless the Declaration and required fees are filed by:

For a February examination, the preceding June 1;
For a July examination, the preceding November 1.

The Board may, for good cause shown in writing, approve a waiver of this provision.

(d) Upon receipt of a Declaration, the Board shall note the filing date in its records. Absent a Declarant's written request to retain a Declaration, all Declarations will be destroyed five years after the date of filing if the Declarant has not activated his or her file by applying to take the Texas Bar Examination during that five year period.

(e) The Board shall conduct a complete investigation of the moral character and fitness of the Declarant, including a preliminary investigation before forwarding any Declaration and supporting documentation to any District Committee on Admissions, as provided in Rule VII.

RULE VII
DISTRICT COMMITTEES ON ADMISSIONS

(a) The District Committee on Admissions in each Bar District in Texas, appointed by the Supreme Court in accordance with applicable law, shall aid the Board in determining the good moral character and fitness of Declarants, to the extent required by the Board.

(b) The Board shall provide to the Chair of each District Committee on Admissions a list of all declarations filed by the following persons:

(1) each Texas resident whose Declaration indicates that the Declarant's legal residence, prior to entering law school, was in the geographical area encompassed by such district; and

(2) each person who was not a resident of Texas when (s)he entered law school, whose Declaration

indicates that the Declarant entered law school in the geographical area encompassed by such district.

(c) Upon written request of the Chair of such District Committee, the Board shall provide a copy of any person's Declaration, together with the information received in the Board's preliminary investigation. Upon receipt of such Declaration and preliminary information, the District Committee may conduct a personal interview of the Declarant. Such personal interview shall be before not less than five (5) members of the District Committee.

(d) The District Committee is authorized to use all reasonable means to satisfy itself that a Declarant possesses the present good moral character and fitness to practice law; provided, however, that in all cases, the District Committee shall treat Declarants uniformly and impartially.

(e) The District Committee, upon completion of its investigation, shall file with the Board, within sixty (60) days of its receipt of the Declaration and preliminary investigation, a written report, on forms provided by the Board, as to whether, in the opinion of the Committee, such Declarant possesses the good moral character and fitness to be a candidate for admission to the Bar.

(f) The Board may, during the period of the District Committee's inquiry, provide to the Committee additional information and suggestions for further investigation; may direct the District Committees to employ such practices and procedures as the Board may deem appropriate; and may require the Committee to provide to the Board such reports and information with respect to the work of the District Committee as the Board may determine necessary.

RULE VIII
DETERMINATION OF DECLARANT CHARACTER AND FITNESS

(a) After completing its own investigation and considering the reports, if any, received from the applicable District Committee on Admissions, the Board shall thereupon determine whether, on all the documentation before it at this stage, the Board is satisfied that the Declarant possesses the good moral character and fitness necessary for admission to the Texas Bar and shall advise the Declarant accordingly, no later than the 270th day after the date the Declaration and fees were filed with the Board. If the determination is that the Declarant does not have the requisite good character and fitness, such notice shall include:

(1) a detailed analysis of the results of the investigation; and

(2) an objective list of actions, if any, which the Declarant may take to correct the deficiencies and become qualified for admission to the bar after passing the Texas Bar Examination.

(b) A hearing may be set on any such preliminary negative determination, in accordance with the provisions of Rule XV.

(c) If the Board determines that a Declarant may suffer from chemical dependency, the Board shall direct the Declarant to meet with representatives of the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the State Bar, and may require that the Declarant submit to a treatment facility for evaluation.

(d) If the Board determines that a Declarant does suffer from chemical dependency, the Board shall assist the Declarant in working with the Lawyers' Assistance Program

of the State Bar of Texas or a similar program of the State Bar in order to address the dependency.

RULE IX
APPLICATION TO TAKE THE TEXAS BAR EXAMINATION

(a) Every Applicant to take the Texas Bar Examination, whether or not such Applicant was required under Rule VI to file a Declaration, shall, unless prohibited from filing by these Rules, file an Application therefore with the Board as follows:

(1) For the February Examination, an Application shall be timely filed if the Board receives the required forms and fees between June 30 and August 30 of the year preceding the examination.

(2) For the July Examination, an Application shall be timely filed if the Board receives the required forms and fees between the preceding November 30 and January 30.

(3) Upon a showing of good cause or to prevent hardship, the Board may permit the Application to be filed later, upon the payment of applicable late fees as set forth in Rule XVIII. Other than as provided in subsection (f) of this Rule or Texas Government Code, Section 82.027, no Applicant shall be eligible to take an examination until such Application has been on file with the Board by the preceding October 30, for the February Examination, or by March 30, for the July Examination.

(b) The Application shall be made on a form furnished by the Board and calling for information reasonably related to a thorough inquiry into the Applicant's good moral character, fitness, legal education and other qualifications required in these Rules. Applicants who have filed a Declaration required under these Rules shall be

required to complete the Application with information relating only to the period since the filing of the Declaration.

(c) The Board may require the filing of a Supplemental Investigation Form if:

(1) an Applicant previously filed a Declaration and did not apply to take the Texas Bar Examination within four (4) years of the filing date of the Declaration;

(2) two years have elapsed since the date the initial Application was filed with the Board;

(3) two years have elapsed since the date a previously required Supplemental Investigation Form was filed with the Board; or

(4) in other situations deemed appropriate by the Board.

(d) The Applicant shall furnish proof satisfactory to the Board of compliance with the law study requirement of Rule III, and no Applicant shall be admitted to the examination until the Board has determined that these requirements have been met.

(e) Upon the filing of an Application, the Board shall note the filing date and shall initiate an investigation of the Applicant. For Applicants who filed a Declaration required under these Rules, the investigation shall cover only the period of time subsequent to the filing of the Declaration, unless other matters relevant to moral character or fitness not previously revealed in such Declaration shall have come to the attention of the Board.

(f) Any Applicant who fails a Texas Bar Examination may take a later examination upon filing a Re-Application and payment of the then required fees by January 15, for the February Examination, and by June 15, for the July

Examination, unless another provision of these Rules requires the filing of a Supplemental Investigation Form, in which case the Applicant must comply with the regular Application deadlines. Late fees shall be waived for an Re-Applicant filing between the timely deadline and the Re-Application deadline, if such Re-Applicant took and failed the most recent examination given.

RULE X
DETERMINATION OF APPLICANT MORAL CHARACTER AND FITNESS

(a) After completing its investigation on the Application, the Board shall determine whether, on all the documentation before it, the Board is satisfied that the Applicant possesses the requisite present good moral character and fitness and shall advise the Applicant accordingly, no later than the 150th day after the date the Application or Re-Application and fees were filed with the Board. If the determination is that the Applicant does not have the requisite present good moral character and fitness, such notice shall include:

(1) a detailed analysis of the results of the investigation; and

(2) an objective list of actions, if any, which the Declarant may take to correct the deficiencies and become qualified for admission to the bar after passing the bar examination.

(b) If, after investigation, the Board determines:

(1) that an Applicant may suffer from chemical dependency, the Board shall require the Applicant to submit to a treatment facility for evaluation;

(2) that an Applicant suffers from chemical dependency, the Board shall assist the Applicant in working

with the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the State Bar.

(c) A hearing may be set on any such preliminary negative determination, in accordance with the provisions of Rule XV.

RULE XI
TEXAS BAR EXAMINATION

(a) The Supreme Court by separate order has established a list of the subjects for the Texas Bar Examination which shall be open to public inspection at all reasonable times.[1]

(b) The Texas Bar Examination shall be given at such places as the Board may direct.

(c) The Texas Bar Examination shall be given two times each year, beginning on the last Wednesday of the months of February and July, unless the Board otherwise directs.

(d) The approved Applicants for an examination are required to be in attendance at the time and place designated by the Board.

(e) The provisions of this subsection (e) shall apply to each Applicant who takes all portions of the Texas Bar Examination in February 1994 or thereafter.[1] The Texas

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[1] A list of such subjects, established by the Supreme Court as of the time of publication, is included in the Appendix to these Rules. In the event the Court changes such list, the Board will provide a copy of the revised list upon request.

[1] Through the administration and grade release of the July 1998 Texas Bar Examination any Applicant who has previously taken and passed either Part I or Part II of any Texas Bar Examination given from February 1989 through July 1993 and whose score on such part is still

Bar Examination shall last two and one-half days and shall consist of the Multistate Bar Examination (MBE), given on Wednesday; Texas Essay Questions, given on Thursday; and Procedure and Evidence Questions, given on Friday morning. Answers to the Texas Essay Questions will be graded, and total scores will be scaled to the Multistate Bar Examination, using the equipercentile method. Likewise, answers to the Procedure and Evidence Questions will be graded, and total scores will be scaled to the Multistate Bar Examination, using the equipercentile method. Scores on the portions of the examination will be weighted as follows: the scaled MBE score will be multiplied by 2; the scaled Texas Essay score will multiplied by 2; and the scaled Procedure and Evidence score will be multiplied by 1. Applicants who earn a combined scaled score of 675 out of 1000 shall pass the examination.

(f) An Applicant may take no more than five (5) examinations. However, for good cause shown, the Board at its discretion may waive this limitation upon such conditions as the Board may prescribe.

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valid (i.e, five years have not passed since the date of the examination in which the part was passed) shall irrevocably designate, at the time of filing his or her first Re-application for any examination given in July 1994 or thereafter, whether (s)he elects to take the complete Texas Bar Examination and have applied to him or her the provisions of this subsection (e), OR whether (s)he elects to carry forward the passing result from a prior examination, subject to the limitations of prior subsection (e) and (f) of this rule. If the latter option is elected, an Applicant opting to take only the MBE and Texas Essay Questions will pass if (s)he earns on those portions scaled scores, which when added together, equal at least 4/5 of the combined scaled score necessary to pass the Texas Bar Examination at the time of the exam being taken. Likewise, an Applicant opting to take only the Procedure & Evidence Questions will pass if (s)he earns a scaled score equal to at least 1/5 of the combined scaled score necessary to pass the Texas Bar Examination at the time of the exam being taken. An Applicant opting to take only a portion of the examination under this clause shall pay the same fees as an Applicant taking the entire examination.

(g) Any Applicant who has failed the examination at least two times may submit a written request, within two weeks of the release of the examination results, for a Formal Review of the Applicant's performance on the immediately preceding examination (excluding the multistate portion). Such Formal Review shall take place in Austin, Texas at a time selected by the Board and shall consist of an individual oral review of such examination papers by the examining members of the Board. Regardless of the number of examinations taken, an Applicant may receive only one Formal Review under the provisions of this paragraph, provided, however, that no Applicant may obtain both a Formal Review and Informal Review of the same examination.

(h) Any Applicant who has failed the examination may submit a written request, within two weeks of the release of the examination results, for an Informal Review of the Applicant's performance on his/her failed parts of the immediately preceding examination (excluding the multistate portion). The form of such Informal Review shall be either oral or written, at the discretion of the examining members of the Board. An Applicant may request an Informal Review each time (s)he fails all or part of an examination.

(i) The Board shall keep, for one year from the date of every examination, all failing parts of such examination. The Board shall not be required to keep any passing parts of any examination.

RULE XII
EXAMINEES WITH DISABILITIES

(a) The Texas Bar Examination and the Short Form Examination shall be administered to all eligible Applicants in a reasonable manner, while maintaining the integrity of the examination. In each city in which an examination is administered, the Board shall provide facilities that are

reasonably accessible and which enable persons having disabilities to take the examination.

(b) Any Applicant who desires special testing accommodations based upon a disability shall submit a written request to the Board on forms designated by the Board, such request to be submitted at the same time as the Application is submitted.

(c) A request for special testing accommodations must be accompanied by written proof evidencing the existence of the disability. Statements from licensed physicians or a professional specialist that specifically set forth the physical, mental or emotional handicap or disability and the relationship between the disability and the inability to take the examination under standard conditions shall be required. The Board may require additional information or evidence from the Applicant and may, at its option, seek professional evaluation of such data. The Applicant will be responsible for the cost of obtaining documented medical evidence and other required information.

(d) After considering the written request of the Applicant and the evidence submitted, the Board shall determine what reasonable special testing accommodations will be granted.

RULE XIII
ATTORNEYS FROM OTHER JURISDICTIONS

(a) An attorney holding a valid law license issued by another state shall meet the requirements imposed on any other Applicant under these Rules, unless such attorney qualifies under on of the following exceptions:

(1) Such attorney is eligible for admission without examination, if the attorney:

(A) at the time the Texas law license is issued, meets the requirements of Rule II(a)(5);

(B) satisfied the Board of his/her good moral character and fitness after furnishing to the Board such evidence as the Board may require;

(C) has been actively and substantially engaged in the lawful practice of law in any state as his/her principal business or occupation for at least five of the last seven years immediately preceding the filing of the Application;

(D) has a J.D. degree from an approved law school; and

(E) has failed neither the last Texas Bar Examination taken in Texas, nor the last Short Form examination taken in Texas.

(2) An attorney who does not meet the criteria for admission without examination set out above is eligible for admission after passing the **Short Form Examination**,[1] if the attorney:

(A) at the time the Texas law license is issued, meets the requirements of Rule II(a)(5);

(B) satisfied the Board of his/her good moral character and fitness after furnishing to the Board such evidence as the Board may require;

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[1] The Short Form Examination shall cover the areas of Texas substantive law and procedure which the Board may determine advisable. Any Applicant who fails the Short Form Examination twice shall thereafter be required to pass the Texas Bar Examination as provided in Rule XI.

(C) has not failed the last Texas Bar Examination taken;

(D) has not failed the last bar examination taken in any other state;

(E) has not failed the last short form examination (sometimes known as attorneys' exam) in any other state; **and**

(F) meets one of the following requirements:

(i) has a J.D. degree from an approved law school and has been actively and substantially engaged in the lawful practice of law in any State as his/her principal business or occupation for at least three of the last five years immediately preceding the filing of the Application; or

(ii) has a J.D. degree, which is not based on study by correspondence, from an unapproved law school and has been actively and substantially engaged in the lawful practice of law as his/her principal business or occupation for at least five of the last seven years immediately preceding the filing of the Application.

(3) An attorney who does not meet the criteria set out above for admission after passing the Short Form Examination is eligible for admission after passing the **Texas Bar Examination**, if the attorney:

(A) at the time the Texas law license is issued, meets the requirements of Rule II(a)(5);

(B) satisfied the Board of his/her good moral character and fitness after furnishing to the Board such evidence as the Board may require;

(C) has a J.D. degree, which is not based on study by correspondence, from an unapproved law school; **and**

(D) has been actively and substantially engaged in the lawful practice of law in any State as his/her principal business or occupation for at least three of the last five years immediately preceding the filing of the Application.

(b) An Attorney holding a *valid* law license issued by a foreign nation is eligible for admission after passing the Texas Bar Examination and after meeting all other requirements for admission imposed on any other Applicant under these Rules, except that:

(1) The attorney is deemed to have fulfilled the law study requirement without the attorney holding a J.D. degree from an approved law school upon proof of active and substantial engagement in the lawful practice of law in such foreign nation as his/her principal business or occupation for at least five of the last seven years immediately preceding the filing of the application, if such attorney:

(A) has been licensed, for at least five years, to practice law in the highest court of the foreign nation;

(B) holds the equivalent of a J.D. degree, which is not based on study by correspondence, from a law school accredited in the jurisdiction where it exists and which requires the equivalent of a three-year course of study, which is the substantial equivalent of the legal education provided by an approved law school; and

(C) meets one of the following criteria:

(i) demonstrates to the Board that the law of such foreign nation is sufficiently comparable

to the law of Texas that, in the judgment of the Board, it enables the foreign attorney to become a competent attorney in Texas without additional formal legal education; **or**

(ii) holds an L.L.M. from an approved law school.

(2) The attorney is deemed to have fulfilled the law study requirement without the attorney holding a J.D. degree from an approved law school upon proof of active and substantial engagement in the lawful practice of law in such foreign nation as his/her principal business or occupation for at least three of the last five years immediately preceding the filing of the Application, if such attorney:

(A) has been licensed, for at least three years to practice law in the highest court of the foreign nation;

(B) holds the equivalent of a J.D. degree, which is not based on study by correspondence, from a law school accredited in the jurisdiction where it exists and which requires the equivalent of a three-year course of study that is the substantial equivalent of the legal education provided by an approved law school;

(C) demonstrates to the Board that the law of such foreign nation is sufficiently comparable to the law of Texas that, in the judgment of the Board, it enables the foreign attorney to become a competent attorney in Texas without additional formal legal education; **and**

(D) holds an L.L.M. from an approved law school.

(c) An attorney applying under this Rule XIII shall furnish to the Board such proof of his/her active and substantial engagement in the practice of law as his/her principal business as the Board may require.

(1) The phrase "practice of law" shall include:

(A) private practice as a sole practitioner or for a law firm, legal services office, legal clinic, public agency, or similar entity;

(B) practice as an attorney for an individual, a corporation, partnership, trust, or other entity, with the primary duties of furnishing legal counsel and advice, drafting and interpreting legal documents and pleadings, interpreting and giving advice regarding the law, or preparing, trying or presenting cases before court, departments of government or administrative agencies;

(C) practice as attorney for local, state, or federal government, with the same primary duties described in the preceding subsection;

(D) employment as a judge, magistrate, referee, or similar official for the local, state, or federal government, provided that such employment is open only to licensed attorneys;

(E) employment as a full-time teacher of law at a law school approved by the American Bar Association;

(F) any combination of the preceding categories.

(2) The requirement of active and substantial engagement in the practice of law as his/her principal business or occupation cannot be satisfied with practice by a non-resident attorney under Rule XIX.

(d) Any attorney applying and qualifying under this Rule XIII is required to take and pass the Multistate Professional Responsibility Examination (MPRE) as required under Rule V.

RULE XIV
FOREIGN LEGAL CONSULTANTS

(a) A "Foreign Legal Consultant" is a person who:

(1) has been, and is currently, admitted to practice law in a foreign country, and while so admitted, has engaged in the practice of law in that country for a period of not less than five of the seven years immediately preceding the date of Application and has been in good standing as an attorney or counselor at law or the equivalent in that country throughout the period of such admission; and

(2) possesses the good moral character and fitness requisite for admission to the Bar of Texas; and

(3) is an actual resident of Texas; and

(4) is over twenty-six (26) years of age; and

(5) possesses the requisite documentation evidencing compliance with the immigration laws of the United States; and

(6) has been issued a Certificate of Registration as Foreign Legal Consultant, which certificate is in current status.

(b) An Applicant for a Certificate of Registration as a Foreign Legal Consultant shall file an Application with the Board on a form furnished by the Board accompanied by the requisite fee. Such Application shall include, but not be limited to:

(1) a certificate from the authority in such foreign country having final jurisdiction over professional admission and discipline, certifying as to the Applicant's admission to practice and the date thereof and as to his or her good standing as such attorney or counselor at law or the

equivalent, together with a duly authenticated English translation of such certificate if it is not in English; and

(2) a letter of recommendation from one of the members of the executive body of such authority or from one of the judges of the highest law court or intermediate appellate court of such foreign country, together with a duly authenticated English translation of such letter if it is not in English; and

(3) such other evidence as to the Applicant's educational and professional qualifications, required practice, and good moral character and fitness; and

(4) documentation in duly authenticated form evidencing that the Applicant is lawfully entitled to reside and be employed in the United States of America pursuant to the immigration laws thereof; and

(5) a duly acknowledged instrument in writing setting forth the Applicant's address of actual residence in the State of Texas and designating an agent for service in Texas upon whom process may be served, with like effect as if served personally upon the Applicant, in any action or proceeding thereafter brought against the Applicant and arising out of or based upon any legal services rendered or offered to be rendered by the Applicant within or to residents of the State of Texas whenever, after due diligence, service cannot be made upon the Applicant at such address or at such new address as filed by a supplemental instrument; and

(6) in such amount as the Board may prescribe, evidence of professional liability insurance or such other proof of financial responsibility as the Board may require, to assure the Applicant's proper professional conduct and responsibility; and

(7) a duly acknowledged statement affirming that the Board will be immediately advised of any law suit

brought against the Applicant which arises out of or is based upon any legal services rendered or offered to be rendered by the Applicant within Texas.

(c) The Board shall investigate the qualifications, moral character, and fitness of any Applicant for a certificate, and may require the Applicant to submit any additional proof or information which the Board deems appropriate.

(1) The Applicant shall disclose all past charges of professional misconduct and shall show that the Applicant has never been disbarred or had his or her license suspended and that there are no charges of misconduct pending against Applicant, and so far as the Applicant knows none are being threatened.

(2) Upon a showing that strict compliance with the provisions of (b)(1) or (2) of this Rule is impossible or very difficult for reasons beyond the control of the Applicant, the Board may in its discretion, waive or vary the Application of such provisions and permit the Applicant to submit other evidence.

(3) Upon completion of its investigation, if the Board determines that the Applicant possesses all the qualifications set forth in paragraph (a) of this Rule, the Board shall recommend to the Court the issuance of a Certificate of Registration as a Foreign Legal Consultant.

(d) The Certificate of Registration as a Foreign Legal Consultant shall be valid for one year, unless revoked for good cause shown, and may be renewed upon the filing of an annual request, which shall be accompanied by payment of the annual renewal fee and such evidence as the Board shall deem necessary that all requirements for the issuance of an original Certificate continue to be met.

(e) Certified Foreign Legal Consultants shall be subject to control by the Supreme Court of Texas and to censure, suspension, removal or revocation of the Certificate of Registration in accordance with the State Bar Act, the State Bar Rules, and the Texas Disciplinary Rules of Professional Conduct applicable to members of the State Bar of Texas.

(f) Each Applicant, prior to the issuance of the Certificate of Registration, shall execute and file with the Supreme Court of Texas an oath in the form prescribed attesting that the ?Foreign Legal Consultant will abide by the rules and regulations applicable to such Certified Foreign Legal Consultant.

(g) A Foreign Legal Consultant may render legal services and give professional legal advice only on the law of the foreign country where the legal consultant is admitted to practice, subject, however, to the limitations that such person shall not:

(1) appear for a person other than himself as attorney in any Court, before any magistrate or other judicial officer, or before any administrative agency in Texas or prepare pleadings or any other papers or issue subpoenas in any action or proceeding brought in any such Court, before any such magistrate or other judicial officer, or before any such administrative agency; or

(2) prepare any deed, mortgage, assignment, discharge, lease, trust instrument, or any other instrument affecting title to real estate located in the United States; or

(3) prepare:

(A) any will or trust instrument affecting the disposition on death of any property located in the United States; or

(B) any instrument relating to the administration of a decedent's estate in the United States; or

(4) prepare any instrument in respect to the marital relations, rights or duties of a resident of the United States or the custody or care of the children of such a resident; or

(5) otherwise render professional legal services or advice on the law of the State of Texas or of the United States or of any other jurisdiction (domestic or foreign) in which such person is not authorized to practice law (whether rendered incident to the preparation of legal instruments or otherwise); or

(6) in any way hold himself/herself out as an attorney licensed in Texas, as a member of the State Bar of Texas, or as an attorney licensed in any United States jurisdiction, unless actually so licensed; or

(7) use any title other than "Foreign Legal Consultant" or his or her authorized title and/or firm name in the foreign country of his admission to practice, in each case in conjunction with the name of such foreign country.

RULE XV
HEARINGS

(a) The Board shall set a time and place for a public hearing on the question of the requisite moral character and fitness of an Applicant or Declarant, under the following circumstances:

(1) When any Applicant or Declarant who is the subject of a preliminary negative character and fitness determination files a written request for such a hearing within thirty (30) days of his or her receipt of the Board's letter containing the notice of such determination; or

(2) When the Board determines that, in the interest of fairness, such a hearing is necessary regardless of whether the Declarant or Applicant files a timely request for hearing.

(b) If there are pending proceedings involving the Declarant or Applicant, the resolution or which could impact the determination of his/her character and fitness, the Board may exercise its discretion to defer the hearing until such time as the pending proceeding is resolved.

(c) The Applicant or Declarant shall be given reasonable notice, by registered or certified mail, return receipt requested, of the time and place of the hearing.

(d) An Applicant or Declarant, either before or after receiving notice of a hearing, may agree to waive the hearing, stipulate to the facts regarding good moral character and fitness, and allow the Board to proceed with making a final determination as to the Applicant's moral character and fitness under these Rules. An Applicant may additionally agree to a Probationary License and to any conditions imposed by the Board to protect the public.

(e) At the hearing:

(1) The Board or any opponent of approval of the moral character and fitness of the Applicant or Declarant, shall have the burden of proof and be required to present evidence that the Applicant or Declarant does not have the requisite good moral character or fitness. Upon the admission of such evidence, the burden of proof shall shift to the Applicant or Declarant to show that the Applicant possesses good moral character and fitness as defined in these Rules. However, in a redetermination hearing on a Probationary License, the burden of proof shall be on the Probationary Licensee to demonstrate that (s)he has complied with the conditions of the Probationary License.

(2) The Applicant or Declarant shall be given the opportunity to be present in person and by attorney, to present evidence, to confront and to cross-examine adverse witnesses, and to present argument to the Board on the issues of law and fact; provided, however, that evidence otherwise inadmissible may be admitted if the evidence is of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

(3) Evidence and argument for or against the Declarant or Applicant may be presented by the Board or any other interested party.

(f) In connection with hearings conducted under this Rule, the Board shall have the authority to administer oaths, issue subpoenas, take depositions, and employ court reporters.

(g) After the hearing, in closed deliberations, the Board may:

(1) determine that an Applicant or Declarant has the requisite present good moral character and fitness and, in the case of an Applicant, should be recommended for admission to the Texas Bar;

(2) determine that a Declarant should be granted conditional approval of his or her present good moral character and fitness and be required to meet such conditions as the Board deems appropriate;

(3) determine that an Applicant should be granted conditional approval of his or her present good moral character and fitness and be recommended for a Probationary License subject to the terms of Rule XVI, after meeting all other requirements of these Rules;

(4) determine that an Applicant or Declarant does not possess the requisite present good moral character and fitness required for admission to the Texas Bar; or

(5) defer a decision until such time as the Board has the opportunity to consider further information, evaluations, or documentation as deemed necessary by the Board;

(6) in the case of either a temporary or probationary license, recommend to the Supreme Court that the license should be renewed in its present form, renewed with additional or amended conditions, or revoked and no regular license be issued.

(h) Within a reasonable period of time after the decision is made, the Board shall furnish to the Applicant or Declarant a written order setting forth the decision of the Board. If the decision is adverse, such order shall specify the bases of Board's determination and shall include an objective list of actions, if any, the Applicant or Declarant may take to become qualified for a license to practice law in Texas. Any such order containing a determination that the Applicant or Declarant suffers from chemical dependency shall include provisions setting out the rights under Section 82.038, Texas Government Code.

(i) An individual who has been the subject of a Board order containing a negative character and fitness determination may petition the Board in writing for a redetermination hearing on the issue of character and fitness, as follows:

(1) No petition for redetermination may be filed earlier than the date specified in the Board's order (or if none, then no earlier than twelve months from the date of the hearing), nor more often than once every twelve months.

(2) Such individual shall have the burden of proof as to rehabilitation and the possession of present good moral character and fitness.

(3) Such individual shall complete and file with the Board a Supplemental Investigation Form and pay the requisite fees therefor within thirty (30) days of the filing of the redetermination petition.

(4) This subsection (h) shall not apply to character and fitness redeterminations in Probationary License cases, which are governed under the provisions of Rule XVI.

(j) The following provisions shall govern judicial review of the Board's decision:

(1) The affected Applicant or Declarant shall institute, in the district courts of Travis County, Texas proceedings for review of such decision within sixty (60 days after the date the written decision is mailed to the Applicant.

(2) The petition for review shall name the Board as defendant and shall be served on the Executive Director of the Board.

(3) After service of such petition, and within the time permitted for filing an answer, the Board shall file with the district court a certified copy of the record of the Board's proceedings.

(4) The review of the Board's decision shall be tried by the court without a jury.

(5) The court shall determine from the certified record on file whether or not the Board's decision is reasonably supported by substantial evidence. The reviewing court may affirm the action complained of or remand the matter to the Board for further proceedings.

(6) Appeals from any final judgment of the court may be taken by either party in the manner provided for in civil actions generally, but no appeal bond shall be required of the Board.

(k) The Board shall have the authority to adopt such other rules of procedure for hearings, not inconsistent with these Rules, as the Board deems necessary or appropriate to implement these Rules.

(l) The Board may assess costs against any Declarant or Applicant who has been sent reasonable notice of a hearing before the Board and who does not appear.

RULE XVI
PROBATIONARY LICENSES

(a) The Board shall have the authority to grant conditional approval of the present good moral character and fitness of an Applicant and to recommend the granting of a Probationary License, after the Applicant meets all other requirements under these Rules, in the following circumstances:

(1) when the Board determines that the Applicant suffers from chemical dependency or has been convicted of, or is on probation for, a first offense of driving while intoxicated under Article 6701/-1, V.T.C.A.; or

(2) in other circumstances in which, on the record before it, the Board determines that the protection of the public requires the temporary monitoring of the Applicant in question.

(b) The Board shall not have the authority to refuse to recommend the granting of a Probationary License to an Applicant who has passed the applicable bar examination **solely** because the Applicant suffers from chemical dependency or has been convicted for a first offense for driving while intoxicated under Article 6701/-1, V.T.C.A.

(c) In any order recommending the issuance of a Probationary License to practice law, the Board shall specify the conditions of the license, which may include, but are not limited to, the following:

(1) prohibiting the use of alcohol or controlled substances;

(2) requiring treatment for chemical dependency;

(3) requiring the individual to practice law under the supervision of an attorney admitted to the Texas Bar;

(4) requiring submission to periodic, random drug testing;

(5) requiring the individual to report periodically to the Board;

(6) requiring suspension, for any portion of the probationary period, of an activity for which a license to practice law is required.

(7) requiring the individual to reside continuously in Texas during the period of the Probationary License, unless for good cause shown, the Board waives such requirement; or

(8) requiring the individual to take specific actions designed to cure or end any deficiencies in his or her moral character and fitness, as determined by the Board.

(d) Probationary Licenses shall expire as follows:

(1) A Probationary License issued solely because of the Board's determination that the individual suffers from chemical dependency shall expire on the second

anniversary of the date on which it is issued, unless temporarily extended hereunder.

(2) Any other Probationary License shall expire on the date specified by the Board in the Order recommending issuance of the Probationary License, unless temporarily extended hereunder.

(3) The term of a Probationary License may be temporarily extended, upon the request of the Probationary Licensee, in the event that the normal expiration date falls before the Board has had the opportunity to make a redetermination as provided hereunder.

(e) A Probationary Licensee may apply for a renewal of the Probationary License or for a regular license to practice law, by filing a written request therefor, at least sixty (60) days prior to the expiration date of the Probationary License.

(f) The Board shall require any Probationary Licensee issued a Probationary License because of a determination of chemical dependency, prior to the redetermination hearing, to submit to an evaluation, at the sole cost of the Probationary Licensee, by a treatment facility approved by the Board.

(g) After a hearing held subject to the provisions of Rule XV herein on the redetermination of the character and fitness of a Probationary Licensee, the Board may:

(1) recommend, upon a finding of the requisite good moral character and fitness, the issuance of a regular license to practice law in Texas; provided, however, that in any case in which a Probationary License was issued on the basis of chemical dependency, the Board shall not recommend the Probationary Licensee for regular admission until the Board finds that the Probationary Licensee has

successfully completed treatment and has been free from chemical dependency for the preceding two years;

(2) recommend, upon a finding that a condition of the Probationary License has been violated;

(A) extension of the Probationary License; or

(B) termination or immediate revocation of the Probationary License.

(h) The Board shall initiate and maintain a working relationship with the Lawyers' Assistance Program or similar program of the State Bar of Texas in order to provide for the evaluation and referral to treatment for those persons issued a Probationary License hereunder. The treatment and professional evaluation shall be at the sole expense of the Probationary Licensee.

RULE XVII
ISSUANCE OF LICENSE CERTIFICATES AND CANCELLATION OF LICENSE UNLAWFULLY OBTAINED

(a) Upon an Applicant's becoming entitled to a license under these Rules, the Board shall certify such Applicant to the Supreme Court, whose Clerk shall thereupon issue the corresponding license in the form of a written certificate. The license shall be issued only in the name as shown on the Applicant's birth certificate or as changed by the final order of a court of competent jurisdiction or by marriage, except that a given name may be omitted or represented by initial if the Applicant so requests in writing. No license shall be issued using an alias, assumed name, nickname, or abbreviation of a name.

(b) All law licenses are issued upon the condition that the Applicant has faithfully complied with these Rules. If at

any time it appears that an Applicant has obtained a license fraudulently or by willful failure to comply with these Rules, after notice and hearing, the Board may recommend to the Supreme Court that such license be withdrawn and cancelled, and the name of the license holder stricken from the roll of attorneys.

(c) No license issued hereunder shall be valid unless the Applicant named therein has paid the required fees and has enrolled in the State Bar of Texas in compliance with the State Bar Rules.

(d) The license certificate belongs to the Supreme Court of Texas and shall be surrendered to the Court upon proper demand.

RULE XVIII
FEES

(a) The following provisions shall govern the fees charged by the Board:

FEES RELATING TO DECLARATIONS

Declaration Investigation Fee	$125
Late Filing Fee	$150
Fee for Check Returned for Insufficient Funds	$ 25

FEES RELATING TO ELIGIBILITY & EXAMINATIONS

Texas law student:

$ 150	Application & Examination Fee

Out-of-state law student:

$ 150	Application & Examination Fee
150	Investigation Fee
$ 300	

Attorneys licensed in another state for less than one year:

$ 275	Application Fee
150	Examination Fee
150	Investigation Fee
$ 575	

Attorneys licensed in another state for one year or more (unless a full-time professor in a approved Texas law school OR unless qualified for admission without examination):

$ 575	Application Fee
150	Examination Fee
150	Investigation Fee
$ 875	

Full-time professor in approved Texas law school, unless qualified for admission without examination:

$ 350	Application Fee
150	Examination Fee
150	Investigation Fee
$ 650	

Attorneys qualified for admission without examination under Rule XIII (unless a full-time professor in approved Texas law school):

$ 625	Application Fee
150	Investigation Fee
$ 775	

Full-time professor in approved Texas law school, qualified for admission without examination:

$ 400	Application Fee
150	Investigation Fee
$ 550	

Foreign nation attorney:

$ 575	Application Fee
150	Examination Fee
150	Investigation Fee
100	Foreign Nation Inquire Fee
$ 975	

Foreign Legal Consultant:

$ 700	Application Fee
150	Investigation Fee
100	Foreign Nation Inquiry Fee
$ 950	

Foreign Legal Consultant Re-Application Fee:

$ 150	Re-Application Fee
150	Supplemental Investigation Fee (every second renewal year only)
$ 300	($150 in alternate years)

Supplemental Investigation Fee
(as required under Rule IX) . . . . . $ 150

Miscellaneous Fees:

Late Filing Fee	$ 150
Re-Application Fee	$ 150
Fee for Check Returned for Insufficient Funds	$ 25
MBE Transfer Fee	$ 15

(b) No refund of fees will be made in the event of the withdrawal of any Declaration or Application, nor in the event a determination is made by the Board that the Applicant or Declarant does not meet the requirements imposed under these Rules.

(c) And fee required under these Rules may be waived or lowered by the Board upon written request and proof of indigency.

RULE XIX
REQUIREMENTS FOR PARTICIPATION IN TEXAS PROCEEDINGS BY A NON-RESIDENT ATTORNEY

(a) A reputable attorney, licensed in another state but not in Texas, who resides outside of Texas may seek permission to participate in the proceedings of any particular cause in a Texas court by filing with the applicable court a written, sworn motion requesting permission to participate. The motion shall contain:

(1) the office address, telephone number, and, if available, the telecopier number of the non-resident attorney movant;

(2) the name and State Bar card number of an attorney licensed in Texas, with whom the non-resident attorney will be associated in the Texas proceedings, and that attorney's office address, telephone number, and, if available, telecopier number;

(3) a list of all cases and causes, including cause number and caption, in Texas courts in which the non-resident attorney has appeared or sought leave to appear or participate in within the past two years;

(4) a list of jurisdictions in which the non-resident attorney is licensed, including federal courts, and a

statement that the non-resident attorney is or is not an active member in good standing in each of those jurisdictions;

(5) a statement that the non-resident attorney has or has not been the subject of disciplinary action by the Bar or courts of any jurisdiction in which the attorney is licensed within the preceding five (5) years, and a description of any such disciplinary actions;

(6) a statement that the non-resident attorney has or has not been denied admission to the courts of any State or to any federal court during the preceding five (5) years;

(7) a statement that the non-resident attorney is familiar with the State Bar Act, the State Bar Rules, and the Texas Disciplinary Rules of Professional Conduct governing the conduct of members of the State Bar of Texas, and will at all times abide by and comply with the same so long as such Texas proceeding is pending and said Applicant has not withdrawn as counsel therein.

(b) The motion of the non-resident attorney seeking permission to participate in Texas proceedings shall be accompanied by motion of the resident practicing Texas attorney with whom the non-resident attorney shall be associated in the proceeding of a particular cause, which motion shall contain a statement that the resident attorney finds the Applicant to be a reputable attorney and recommends that the Applicant be granted permission to participate in the particular proceeding before the court.

(c) The court may examine the non-resident attorney to determine that the non-resident attorney is aware of and will observe the ethical standards required of attorneys licensed in Texas and to determine whether the non-resident attorney is appearing in courts in Texas on a frequent basis. If the court determines that the non-resident attorney is not a reputable attorney who will observe the ethical standards

required of Texas attorneys, that the non-resident attorney has been appearing in courts in Texas on a frequent basis, that the non-resident attorney has been engaging in the unauthorized practice of law in the state of Texas, that other good cause exists, the court or hearing officer may deny the motion.

(d) If, after being granted permission to participate in the proceedings of any particular cause in Texas, the non-resident attorney engages in professional mis-conduct as that term is defined by the State Bar Act, the State Bar Rules, or the Texas Disciplinary Rules of Professional Conduct, the court may revoke such non-resident attorney's permission to participate in the Texas proceedings and may cite the non-resident attorney as for contempt. In addition, the court may refer the matter to the Grievance Committee of the Bar District wherein the court is located for such action by the Committee as it deems necessary and desirable.

(e) The filing of a motion under this Rule shall constitute submission to the jurisdiction of the Grievance Committee for the District wherein the court is located. The county in which the court is located shall be considered the county of residence of said non-resident attorney for purpose of determining venue in any disciplinary action involving said attorney.

RULE XX
ORGANIZATIONAL AND MISCELLANEOUS POWERS OF THE BOARD

(a) Upon completion of the tabulation of grades given on an examination and approval of such tabulation by the Chairman, the grades shall be mailed to the examinees at the addresses given on their Applications. The Deans of the Law Schools in the State of Texas shall be furnished a list of the candidates passing the Bar examination after release of results to the individual candidates. Prior to mailing grades to examinees, no grades shall be given by the Board by

telephone to any person nor shall any Board member or employee of the Board give grades in person to an examinee or anyone inquiring on behalf of an examinee.

(b) Unless the Court designates the member of the Board who shall serve as Chairman, the Board shall have authority to select a Chairman. The Board shall select other officers from its own membership, assign their respective duties, may delegate power and authority to one or more of its members, and shall have authority to formulate the procedure of the Board.

(c) The Board shall keep and maintain its files on Declarants and Applicants until such time as their destruction is authorized, as follows:

(1) Files in which a regular license has been issued shall be destroyed five (5) years from the date the license was issued.

(2) Files in which a Probationary License has been issued but no Regular License has been issued shall be destroyed ten (10) years from the date of the last formal activity on the file (i.e., petition for redetermination, hearing, order, expiration of last term of probationary license, issuance of regular license following redetermination hearing, etc.)

(3) Files in which a Declaration, but not an Application, has been filed shall be destroyed five (5) years from the date the Declaration was filed.

(4) Files in which an Application has been filed, but no Regular or Probationary License issued, shall be destroyed five (5) years from the date of the last formal activity on the file (i.e., Re-Application, examination, hearing, petition for redetermination, etc.), after inputting into the Board's computer data base pertinent and necessary data contained therein.

(d) Insofar as may be consistent with these Rules, the Board is authorized to make all reasonable regulations, including written interpretations of general application with respect to these Rules or provisions of general application for relevant subjects not covered by these Rules. The Board may also prescribe forms and certificates to be executed by Applicants for admission to the Texas Bar, whether for a first license to practice law or as a practicing attorney of another jurisdiction, or certificates or other forms to be executed by or on behalf of the Board itself.

(e) The Board is given discretion in the interpretation and application of these Rules. For good cause shown to the satisfaction of the Board, upon written request, waivers of specific requirements described in these Rules may be granted, unless it appears therefrom that no exceptions are contemplated by the Supreme Court.

(f) The Board may, in conjunction with its investigation of moral character and fitness or the administration of the bar examination, require Declarants and Applicants to furnish a complete set of fingerprints.

(g) The Board may delegate its duties to a panel of the Board or to the staff, as necessary and where not prohibited by law; provided, however, that the Board shall not delegate to staff its authority to make final determinations that an Applicant or Declarant lacks the requisite good moral character and fitness.

(h) The Supreme Court hereby creates the Board of Law Examiners Fund which shall be comprised of all fees and monies received and interest earned by the Board and shall be used by the Board to administer the functions of the Supreme Court and the Board relating to the licensing of lawyers as directed by the Court. The Fund shall be maintained in one or more financial institutions in Texas, as designated by the Board.

(i) The Board shall have full power to contract for the performance of all of its functions, and any person dealing or contracting with the Board shall be conclusively entitled to rely upon the Board's written determination that the expense thus incurred or contracted is for a proper function of the Board.

(j) The disbursement of funds shall be according to such rules, regulations and budgets as the Board may adopt. The Board shall keep a full record of such receipts and disbursements.

APPENDIX

TEXAS BAR EXAMINATION SUBJECTS

Topics covered through February 1999 Exam

1. Constitutional law
2. Contracts
3. Criminal law
4. Evidence
5. Real property
6. Torts

Texas Essay Subjects

1. Oil & gas
2. Uniform Commercial Code
3. Business associations (including corporations agency and partnerships.
4. Family law
5. Trusts (including resulting and constructice trusts)
6. Wills & administration

Procedure And Evidence Subjects

1. Civil procedure (including Federal and Texas court jurisdiction, pleading and practice)
2. Criminal procedure
3. Evidence

Topics covered beginning with July 1999 Exam

Multistate Subjects

1. Constitutional law
2. Contracts
3. Criminal law
4. Evidence
5. Real Property
6. Torts

Texas Essay Subjects

7. Business Associations, including Agency, Corporations, Partnerships, Limited Liability Companies and Professional Associations
8. Trusts and Guardianships
9. Wills and Administration
10. Family Law
11. UCC Uniform Commercial Code
12. Consumer Rights, including DTPA, Usury, Insurance, and Bankruptcy
13. Real Property, including Oil and Gas
14. Income, Estate, and Gift Taxes
15. Federal and Texas Civil Procedure and Evidence, including Jurisdiction
16. Federal and Texas Criminal Procedure and Evidence

APPENDIX G

NO. 96-039906

UNAUTHORIZED PRACTICE OF LAW COMMITTEE FOR THE SUPREME COURT OF Plaintiff,	§	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS
VS.	§	
Julius J. Larry, III Defendant.	§	165TH JUDICIAL DISTRICT

ORDER GRANTING TEMPORARY INJUNCTION

The Application of the Unauthorized Practice of Law Committee for the Supreme Court of Texas, Plaintiff in this cause, for a Temporary Injunction came on for hearing the 25th and 26th days of September, 1966, due notice having been given.

In considering the evidence received and the argument of counsel, the Court finds and concludes that Plaintiff will probably prevail on the trial of this cause; that **JULIUS J. LARRY, III**, Defendant, intends to continue to give advice as to matters of law to the general public, all to the detriment of the citizens of the State of Texas.

The Court finds as follows:

1. **JULIUS J. LARRY, III** is not a licensed attorney in the State of Texas and has not been licensed since May 1, 1995;

2. **JULIUS J. LARRY, III** has engaged in the unauthorized practice of law in the state of Texas;

3. **JULIUS J. LARRY, III** has, after May 1, 1995, represented himself as a licensed attorney in the prosecution of personal injury cases and has, without the consent or knowledge of the following individuals, settled personal injury matters and received funds in his IOLTA account: Lela Vonn Wright, Nelda Petroy, Michelle D. Londow, and Damita and Billy Sadler; and,

4. **JULIUS J. LARRY, III** has permitted and continues to permit employees or former employees to use and make deposits in his IOLTA account, in 1995 and 1996, located at Bank of Houston, Account Number 0096393 styled "Law office of Julius J. Larry, III - IOLTA Account".

Unless Defendant **JULIUS J. LARRY, III** is deterred from carrying out his intentions, Plaintiff will be without any adequate remedy at law in that the harm to Plaintiff and to the public it is sworn to protect is incapable of being precisely ascertained and is unpredictable and unending.

IT IS THEREFORE ORDERED that the Defendant, **JULIUS J. LARRY, III**, individually or by and through his agents, executors, assigns, successors or employees and anyone acting in concert with him, be and he is hereby commanded forthwith to desist and is hereby enjoined: from offering any legal services or representation to any new "clients" or for existing clients; from giving any legal advice, preparing or assisting to prepare any legal documents; from interpreting any legal documents, from counseling as to legal rights and procedures in handling pending cases, including but not limited to the handling of personal injury or property damage claims with insurance companies; and from preparing paupers affidavits, for any person or entity other than solely himself. New "client" means any person or

business solicited or contracted with after this date or the signing of this order. **JULIUS J. LARRY, III** is further enjoined from advertising or representing to any person or entity that he is licensed to practice law in the state of Texas. **JULIUS J. LARRY, III** is further enjoined from the use of the above described IOLTA account at the Bank of Houston, such account shall be closed effective this date and the Defendant shall not open any new IOLTA accounts without leave of this court to do so.

The Court further finds that a danger is posed that the Defendant will further prejudice legal rights of citizens of this State and will thereby alter the status quo intended to make ineffectual any judgment in favor of Plaintiff; and unless Defendant is deterred from continuing his present practices, Plaintiff will be without an adequate remedy of law, in that the harm to Plaintiff and to the public it is sworn to protect, is incapable of being precisely ascertained and is unpredictable and unending.

THE COURT FINDS that Plaintiff is exempt, under the law, from filing a bond as otherwise required by law and therefore no bond shall be required.

IT IS FURTHER ORDERED that this case set for trial on its merits on the 17th day of February, 1997 at 9:00 o'clock A. m.

SIGNED THIS 31st day of October, 1996.

/s/
JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

LEHMANN & ASSOCIATES

/s/
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